

Section of Manual:	12. CHILD PROTECTION		
Document	12.3: CHILD SAFE PROCEDURE – REPORTABLE CONDUCT		
Endorsement:		Review Date:	
Review Panel	The Chief Executive Officer, Principal and Compliance Manager must be a part of the review of this procedure. The procedure will be reviewed and updated as required and at least every two years.		
Purpose:	<p>Shoalhaven River College (SRC) is committed to ensuring that all children and young people are protected, and kept safe from harm.</p> <p>This procedure explains how the College meets its obligations under Part 4 of the <i>Children’s Guardian Act 2019</i>, which governs the Reportable Conduct Scheme, and provides related guidance for staff.</p>		
Scope:	<p>This procedure applies to all adults associated with Shoalhaven River College including those working for, or engaged by, the College, regardless of whether their involvement or work is paid or unpaid or child-related, and members of the Board of Directors.</p> <p>The policy applies to all Shoalhaven River College activities which result in or relate to contact with young people, both face-to-face and online, both on-site and off-site during and outside Shoalhaven River College hours (including, for example, sporting events, camps, or excursions).</p>		
RANGS Manual:	3.6 Safe and Supportive Environment; 3.6.1		
Policy and Procedure	<p>Reportable Conduct Scheme</p> <p>The Reportable Conduct Scheme monitors how certain organisations (relevant entities) investigate and report on allegations of ‘reportable conduct’ towards children by employees. Relevant entities must have systems in place for preventing, detecting, and responding to reportable conduct. The ‘head of the entity’ must notify the Office of the Children’s Guardian (OCG) of any reportable allegations or convictions that they become aware of. They must also investigate the allegation and report the outcome to the OCG.</p> <p>Shoalhaven River College is a ‘relevant entity’ for the purpose of the NSW Reportable Conduct Scheme. The ‘head of entity’ is the CEO of KCC Ltd.</p> <p>What is ‘reportable conduct’?</p> <p>Under s.20 of the <i>Children’s Guardian Act 2019</i>, reportable conduct means the following conduct, whether or not a criminal proceeding in relation to the conduct has been commenced or concluded:</p> <ul style="list-style-type: none"> • Sexual offence committed against, with, or in the presence of a child (for example, sexual touching of a child, a child grooming offence, production, dissemination, or possession of child abuse material). • Sexual misconduct with, towards, or in the presence of a child (for example, descriptions of sexual acts without a legitimate reason to provide the descriptions, sexual comments, conversations or 		

Document : 51.3 Protecting children and young people – Reportable Conduct Scheme V11		
Version #13		Date: Dec 2023

communications, comments to a child that express a desire to act in a sexual manner towards the child or another child).

- **Ill-treatment** of a child (for example, making excessive or degrading demands of a child, a pattern of hostile or degrading comments or behaviour towards a child, using inappropriate forms of behaviour management towards a child).
- **Neglect** of a child (for example, failing to protect a child from abuse, exposing a child to a harmful environment, for example, an environment where there is illicit drug use or illicit drug manufacturing).
- **Assault** against a child (for example, hitting, striking, kicking, punching, or dragging a child).
- **An offence under Section 316A** of the Crimes Act 1900 (failure to report a child abuse offence) **or 43B** of the Crimes Act 1900 (failure to protect a child from child abuse).
- **Behaviour that causes significant emotional or psychological harm** to a child (for example, displaying behaviour patterns that are out of character, regressive behaviour, anxiety, or self-harm).

Reportable conduct does not extend to:

- Conduct that is reasonable for the purposes of the discipline, management or care of a child, having regard to the age, maturity, health or other characteristics of the child and to any relevant codes of conduct or professional standards.
- The use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace procedures.

A **reportable allegation** means an allegation that an employee has engaged in inappropriate conduct either in their place of employment or outside of work.

A **reportable conviction** means a conviction including a finding of guilt without the court proceeding to a conviction, in NSW or elsewhere, of an offence involving reportable conduct.

A reportable allegation or conviction must be notified to the OCG and investigated if the SOA is engaged by Shoalhaven River College at the time the head of entity becomes aware of the allegation, regardless of whether the alleged conduct occurred at or outside of work.

Historical allegations

Historical allegation is a term used to describe an allegation of abuse that happened to someone (now an adult) when they were under the age of 18. Sometimes, historical allegations arise many years or decades after the abuse allegedly occurred. An historical allegation will be a reportable allegation if the person the subject of the allegation (SOA) is an employee of Shoalhaven River College at the time the head of entity becomes aware of the allegation.

Who is an employee?

For the purposes of the Reportable Conduct Scheme, an employee at Shoalhaven River College includes:

- paid staff
- volunteers providing services to children
- a contractor engaged directly by the Shoalhaven River College (or by a third party) where the contractor holds, or is required to hold, a Working with Children Check for the purposes of their work with the College
- a member of the Board of Directors

Employee responsibilities

All employees (including volunteers, contractors and members of the Board of Directors) must:

- Be familiar with and observe the Child Safe Policy and related procedures.
- Uphold the Code of Conduct for Shoalhaven River College and report any known or suspected breaches of the Code to the Principal (or the CEO of KCC if the concern relates to the Principal).
- Take action to respond to any immediate risk to the safety of a child or young person by calling Police and/or providing first aid or arranging for medical assistance.
- Report any child protection concerns involving employees to the Principal, including any reportable allegation or reportable conviction.
 - If the concern relates to the Principal, it should be reported to the CEO of KCC.
 - If the concern relates to the CEO of KCC, it should be reported to the Chairperson of the Board of Directors.
 - If the concern relates to another board director, then it should be reported to the CEO of KCC in the first instance.
 - Employees may also directly notify the OCG of a reportable allegation or contact the OCG if they are unsatisfied with Shoalhaven River College’s response to a reportable allegation.
- Treat all child protection concerns confidentially. This means they will not discuss the matter with any other person except to meet their reporting responsibilities.

Under no circumstances should the AV, SOA, or witnesses be interviewed or asked leading questions in the initial stages of identifying and responding to a child protection concern that may be a reportable allegation. These actions may compromise a criminal investigation, legal proceedings, child protection assessment or future reportable conduct investigation.

If necessary, open questions (e.g. ‘What happened next?’, ‘Can you tell me more about that?’, ‘Who hurt you?’) may be asked to gain a clear understanding of the allegation – stop as soon as there is enough basic information to clarify the allegation or if the person providing the information

Board of Directors responsibilities

The Board of Directors must:

- Be satisfied that Shoalhaven River College has appropriate systems in place for preventing, detecting, and responding to reportable conduct.
- Ensure Shoalhaven River College meets its obligations under Part 4 of the Children’s Guardian Act 2019.
- Monitor reportable conduct to identify trends and inform improvements to systems, policies and practices.

Head of entity responsibilities

As the head of entity, the CEO of KCC must:

- Ensure systems are in place for preventing, detecting, and responding to reportable allegations or convictions.
- Make a notification to the OCG within 7 business days of becoming aware of a reportable allegation or conviction against an employee of the entity.
- As soon as practicable after receiving the reportable allegation/conviction, arrange for it to be investigated/determined (including appointing a suitable investigator).
- Ensure the investigation is completed within a reasonable time, having regard to the principles of procedural fairness and the mandatory considerations outlined in Division 6 of the Act.
- Provide information about the allegation, the progress of the investigation and the finding and action taken to the alleged victim and their parent/carer unless the head of the relevant entity considers that it is not in the public interest to do so.
- By 30 calendar days after the head of the entity becomes aware of the reportable allegation, provide either a finalised entity report or an update (an interim report, reasons the investigation has not been completed and an estimated timeframe for completion).
- Make a finding of reportable conduct if satisfied, on the balance of probabilities, that the case against the employee the subject of the reportable allegation has been proved.
- Provide information to the OCG that the Guardian requires under relevant provisions of the Act, which may include information about a reportable allegation, the relevant entity’s response to a reportable allegation, and systems for preventing and responding to reportable allegations.
- Ensure an appropriate level of confidentiality of information relating to reportable allegations and only disclose information about the allegations in circumstances permitted by the Act or other legislation.
- At the end of the investigation of a reportable allegation, the head of agency must send a report to the OCG that enables the OCG to determine whether the investigation was carried out in a satisfactory manner and whether appropriate action was or can be taken.
- Advise the Board of Directors of investigation outcomes.
- Monitor and notify the Board of Directors of any feedback provided by the OCG.

- Assign recommendations/actions arising from the investigation to a suitable staff member for follow up and track compliance with the implementation of any recommendations or actions arising from reportable conduct investigations.
- Monitor and track all reportable allegations to ensure legislative obligations are met.

If a reportable allegation involves the head of entity, the Chairperson of the Board of Directors will fulfil the head of entity responsibilities.

Principal responsibilities

The CEO as head of entity delegates certain responsibilities to the Principal. The Principal will:

- Risk assess all reportable allegations and take all reasonable steps to mitigate risk of harm to children and young people who are owed a duty of care by Shoalhaven River College, or children more generally, and any risk to the SOA and/or to the reportable conduct investigation. (See ‘Risk assessment and management’).
- If an allegation involves a criminal offence, report it to Police and follow any directions provided (See Reporting to Police Procedure). It is an offence to fail to report a child abuse offence.
- If an allegation meets the threshold of Risk of Significant Harm, make a report to the Child Protection Helpline (see Mandatory Reporting Procedure).
- Advise the CEO as soon as they become aware of a reportable allegation or conviction. If the allegation concerns the CEO, the Principal will advise the Chairperson of the Board of Directors who will seek advice from the OCG.
- Submit the [Reportable Conduct Notification Form](#) and other required documentation to the OCG within 7 business days of the head of entity becoming aware of a reportable allegation or conviction. A dated copy of the 7 Day Notification and relevant attachments must be saved in the investigation file.
- Notify the Chairperson of the Board of Directors that a reportable allegation has been received (unless the allegation concerns the Chairperson).
- In liaison with the CEO of KCC (and obtaining advice from the OCG, if required):
 - If an employee has approval for secondary employment with another agency that delivers services to children, determine if they should be provided with relevant information to assist them to take any necessary risk management actions. If required, this will occur via Chapter 16A of the Children and Young Persons (Care and Protection) Act 1998.
 - For very serious matters such as sexual misconduct or sexual offences or serious physical abuse, consider if the OCG’s WWCC

Document : 51.3 Protecting children and young people – Reportable Conduct Scheme V11		
Version #13		Date: Dec 2023

Division should be directly notified (in addition to the 7 Day Notification of the reportable allegation to the OCG).

- If the OCG decides to monitor or directly investigate a reportable allegation, for liaising/ensuring cooperation with the OCG.
- Notify the College’s insurance company and seek legal advice as to next steps when appropriate.
- Liaise with and assist the investigator as required.
- Provide the final Entity Report to the OCG and notify the CEO of any feedback provided by the OCG using the notification form.
- Implement any recommendations/actions arising from the investigation, at the direction of the CEO, and record evidence of this.

If the reportable allegation involves the Principal, the CEO of KCC will fulfil the above responsibilities.

Risk assessment and management

The risk assessment of the reportable allegation, including decisions, reasons and actions, must be documented and updated as new information becomes known. A final risk assessment should be undertaken at the end of the investigation of the conduct, the staff member and the circumstances and takes action to mitigate ongoing risk. See the OCG’s [related factsheet](#) on risk management.

The risk assessment will identify and plan to avoid or minimise the risks to:

- the child(ren) the alleged victim (AV)
- other children with whom the SOA may have contact (including their own children)
- the SOA
- other parties to the alleged incident (such as other employees, witnesses or reporters); and
- the proper investigation of the allegation.

The risk assessment will:

- Have regard to any directions or advice provided by Police and/or DCJ.
- Identify any evidence that may need to be urgently obtained/secured – if the matter may be a criminal offence, urgent advice should be sought from Police.
- Consider whether other steps, aside from reporting to the OCG and Police/DCJ (where required), need to be taken to manage risks, such as standing aside the SOA from work duties.
- Consider what and when information can be initially provided to the SOA.
- Consider who else needs to know about the allegation and what information they should be provided, including what information (if any) should be provided to others who are not involved but aware (e.g., parents, other employees).
- Ensure the AV and other relevant individuals (e.g., other witnesses; the reporter) are provided with appropriate initial and ongoing support.

Document : 51.3 Protecting children and young people – Reportable Conduct Scheme V11		
Version #13		Date: Dec 2023

- Ensure duty of care and procedural fairness obligations to the SOA are met.

Managing risks posed by the SOA

The CEO and Principal will consider whether SOA should remain in their current position, be moved to another area or be suspended. When the allegation has been reported to Police, the SOA will not be informed of any risk management decision until Police have provided advice and direction. Any decision of this kind will be documented, and details provided to the OCG. The employee will be advised that any action taken by the CEO/ Principal is not an indication that a particular finding has been made in relation to the allegation against the employee.

Commencing an investigation

Where Police/DCJ are involved in responding to an allegation, Shoalhaven River College will assist with information gathering as required while managing any identified risks and providing appropriate care and support to the AV. The College will not commence its own investigation until it receives clearance from authorities.

As soon as practical after becoming aware of a reportable allegation, the CEO of KCC will appoint a suitably qualified investigator. The investigator must have a current Working with Children Check.

An external investigator will be appointed if the Principal or another member of staff does not have the capacity given other work demands, or the right skills and experience, to ensure the investigation is handled fairly, competently, and thoroughly. The Principal will engage an external investigator for more serious reportable conduct matters or where there could be a perception of a conflict of interest. Any conflict of interest (actual, potential or reasonably perceived) must be identified and effectively managed having regard to the [OCG's related factsheet](#).

A reportable conduct investigation will only commence:

- For criminal allegations, after clearance is provided by Police (or the Office of the Director of Public Prosecutions).
- In consultation with DCJ, if DCJ is assessing a ROSH report relating to the allegation.
- Having regard to any advice provided by the OCG in relation to an exemption from the requirement to investigate, deferring an investigation, or the OCG conducting its own investigation.

The CEO will ensure the investigator is provided with clear terms of reference that establish the focus of the investigation and identify which legislation, policies, procedures and practices are relevant to the issues being examined. The

Principal/CEO will support the investigator to obtain the necessary information to inform the investigation and will work with them to coordinate key investigation tasks, e.g., planning and conducting interviews and communicating with involved parties, as well as ensuring support is provided to the AV and SOA.

The investigator will conduct the investigation in liaison with the Principal/CEO and in accordance with the following key investigation principles:

- Investigations will be conducted without bias, in an impartial and objective manner.
- Actual or perceived conflict of interest will be disclosed and appropriately managed at the outset and for the duration of the investigation.
- The scope and extent of the investigation will be proportionate to the circumstances and seriousness of the matter.
- Sufficient enquiries will be made to obtain all relevant information.
- Procedural fairness will be afforded to all parties.
- Investigations will be completed without unnecessary delay.
- Confidentiality will be maintained to the extent that is possible (having regard to legal obligations and the principles of procedural fairness).
- Involved parties will be appropriately supported throughout the investigation.
- Full and accurate records of the investigation and its outcome will be made and securely stored.

Planning the investigation

- The investigator will document the plan for conducting the investigation (which will also be reflected in the 30-Day and final report). The plan will:
- Define the allegation(s), when and where it happened and who was present.
- Identify which legislation, policies, procedures and practices are relevant to the issues being examined.
- Identify appropriate sources of evidence (e.g., witnesses, documents, records, photographs, electronic evidence, expert evidence).
- Identify whether Chapter 16A should be used to request or provide information to other prescribed bodies including Police and DCJ and the nature of the information.
- Identify key tasks (e.g., interviewing witnesses) and the order in which they will be completed and approximate timeframes.
- Include a strategy for communicating with involved parties and key stakeholders (including the disclosure of information to the child and their parents/carers under s57 of the *Children’s Guardian Act 2019*).
- Include a plan for involving the AV (and any other involved person including witnesses) in the investigation, making clear (where relevant) how each person’s safety and wellbeing will be prioritised.
- Identify and address any cultural issues or special needs of relevant parties, such as the need for interpreters or appropriate support people.

Document : 51.3 Protecting children and young people – Reportable Conduct Scheme V11		
Version #13		Date: Dec 2023

- Identify other people or agencies to consult for advice about the investigation process required.
- The investigator will liaise directly with the Principal/CEO about obtaining relevant Shoalhaven River College records, obtaining information from DCJ/Police and other parties, and consulting with external authorities (including drafting correspondence for them to issue where appropriate).

Notifying the SOA

The investigator will draft an initial letter of allegation to the SOA (for the signature of the CEO) as soon as possible and for criminal matters, following clearance from Police.

The letter will inform the SOA that a reportable allegation has been made against them and that Shoalhaven River College is required to notify the OCG and investigate it. Detailed information about the allegation will not be provided at this stage. The investigation process will however be explained and support will be offered.

The Principal/CEO will meet with the SOA and take them through the letter before providing them with a copy (or arrange for a suitable staff member to do so). The SOA may bring along a support person or advocate. If the SOA does not wish to meet, the letter will be sent by post and/or email. A copy of the letter together with the date and method it was provided to the SOA must be made on the investigation file.

Managing risks during the investigation

The investigator is responsible for managing risks to the investigation with the support of the Principal/CEO. Factors to consider in relation to managing risks during the investigation include:

- Maintaining confidentiality and procedural fairness.
- Protecting evidence (including securing evidence and preventing and managing unauthorised access to information).
- Ensuring timeliness, including in relation to external reporting requirements.
- Ongoing assessment and management of risks to the complainant, AV, SOA, witnesses, other employees and any other person or body associated with the investigation. Particular care is required to mitigate risks to the safety of any child.
- Meeting the care and support needs of the AV and their family as required.
- Managing key stakeholders, including but not limited to the OCG, Police, DCJ, other employees/carers.
- Appropriate management of involved employees, including the SOA.
- Compliance with legislative obligations relating to the disclosure and sharing of relevant information.
- All risk assessment and management decisions, supported by reasons, must be clearly documented on the investigation file.

Communicating and disclosing information

Document : 51.3 Protecting children and young people – Reportable Conduct Scheme V11		
Version #13		Date: Dec 2023

The investigator should be consulted about the nature and timing of information to be shared while the investigation is underway.

The CEO will ultimately determine what information will be provided to people involved in the matter and other stakeholders during the investigation, having regard to procedural fairness obligations and s.57 of the *Children's Guardian's Act 2019* (see below). They will ensure all parties are advised of the need to maintain confidentiality.

Records will be made of all decisions to disclose information, together with a copy of the information that has been disclosed.

Disclosing information to children and parents/carers

Under section 57 of the *Children's Guardian Act 2019*, relevant information about the reportable conduct investigation must be shared with the child and their parent/carer, unless Shoalhaven River College believes (and can demonstrate) that it is not in the public interest to do so. Section 57 does not prescribe the amount of information that must be disclosed – only the type:

- information about the progress of the investigation
- information about the findings of the investigation
- information about action taken in response to the findings

A decision may be made to not disclose information if:

- it is not in the interests of the child's safety, welfare or wellbeing
- it may jeopardise a current or future police investigation or other proceeding
- it may endanger a person's health or safety
- it may result in a waiver of legal privilege
- result in unfairness to the employee to an extent that is not outweighed by the interest of the relevant party; and
- enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained.

The disclosure of information under section 57 will be considered at the outset of the investigation, continuously reviewed during the investigation, and considered again at its conclusion. See the [OCG's related factsheet](#).

Disclosing information to the Shoalhaven River College community

In limited circumstances, it may be necessary to consider providing some information to the broader Shoalhaven River College community. The CEO will follow directions from Police/DCJ when deciding whether or not to disclose information about a reportable allegation to other members of the College community, and determining the type of information that is disclosed, when to disclose information, and how much information to disclose. In some cases it may be preferable for information to be communicated by Police.

Sharing and requesting information under Chapter 16A

As a prescribed body, Shoalhaven River College has an obligation under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* to share information that is relevant to the safety, welfare or wellbeing of a child (or a class of children) with other prescribed bodies.

Where relevant, consideration will be given to information sharing/provision at the start of the investigation (as part of gathering relevant evidence) as well as during and at the conclusion of the investigation (including where providing certain information may assist another body to manage child protection risks, for example as an employer, volunteer body or employment screening body). Information will generally be requested from Police and DCJ at the start of a reportable conduct investigation.

When information is requested, the other agency/s will be given enough detail to allow them to form the reasonable belief that the test required to disclose the information has been met (i.e., that it is relevant to child safety, welfare or wellbeing and will assist the requesting agency to carry out its functions). Subject to limited exceptions, the other body must comply with the request if the relevant test is met.

Providing support to involved parties

The Principal/CEO will ensure all parties involved in the investigation are offered appropriate support. This includes the AV, SOA, witnesses, and any other affected individuals.

Children and young people will be asked about the support they need to participate in the investigation process. The AV and their parent/carer will be offered ongoing support. This may include referrals to appropriate counselling and support services. Once advised that a reportable allegation has been received, the SOA will be advised of their rights and offered support. The SOA will also be provided with the contact details of an appropriate liaison person if they have any questions or concerns during the investigation process.

Other affected parties, such as other children, other employees and witnesses, may also require support and this will be offered on a case-by-case basis.

All offers/referrals to support services will be documented.

Obtaining and preserving evidence

- As part of the initial risk assessment, any evidence needing to be urgently obtained/secured will have been identified.
- The investigation will have regard to internal sources of evidence as well as evidence that other relevant bodies (particularly Police and DCJ) may hold. The main sources of evidence are usually oral (recollections), documentary (records) or electronic (images and communications).
- Although only one witness may be required to establish any fact or set of facts, additional evidence in the form of corroboration is desirable.
- The evidence obtained and the order in which it is obtained will depend on a range of factors including:
 - the nature and seriousness of the allegation
 - the need to avoid prejudicing an external investigation, and/or manage any risks to the reportable conduct investigation

- evidence that Police/DCJ may have access to or be able to obtain, which Shoalhaven River College might not otherwise be able to access, that could be requested under information sharing provisions.
- All evidence must be logged and stored securely on the investigation file.

Conducting interviews

- Interviews are usually conducted with the AV and any additional witnesses (including the ‘complainant’, if not the AV). The SOA will also be interviewed if they choose this method to respond to the allegation/s.
- The time and location of interviews will be chosen in a way that seeks to minimise inconvenience to the interviewee and ensures their privacy. All interviewees will be offered to have a support person present. The proposed support person must not have a potential conflict of interest.
- Prior to being interviewed, each interviewee will be advised in writing of:
 - the purpose of the interview (i.e., to assist an investigation)
 - the time, date, location and purpose of the interview
 - their right to bring a support person to the interview and the role of a support person
 - the requirement to maintain confidentiality
 - available support
 - the relevant contact person for enquiries
- Witnesses must be interviewed separately. Usually, the complainant (if not the AV) and AV should be interviewed first, followed by other witnesses.
- Where there are several witnesses, the order of interviews will be carefully weighed. The preference will be to first interview witnesses who are likely to have a more independent perspective however, the witness who may have the most information (i.e., the person who saw the most or knows the most) is usually best to interview last (but before the SOA).
- The SOA will generally be interviewed last, once the investigator has been able to obtain as much other evidence as possible. The SOA’s version of events will be sought before the investigator reveals too much of the evidence. Each allegation will be put individually and clearly, and the SOA given every opportunity to respond.
- When conducting the interviews, the investigator will:
 - inform the interviewee and their support person of the support person’s role which is limited to providing emotional support – they must not try to control the process, provide answers on behalf of the person; or influence the person in any way, however, they can indicate if they believe that the SOA is experiencing some type of difficulty during the process
 - be objective and unbiased
 - invite the person to provide a free narrative
 - use open questions when required to elicit more detail
 - not use leading questions
 - provide procedural fairness
 - remind all parties that they need to maintain confidentiality

- Interview notes will be comprehensive (including a record of the observed behaviour of the person at the time of interview), recorded verbatim wherever possible, dated and signed and stored on the investigation file.
- Following the interview, the investigator will provide the SOA with a record of the evidence they provided during the interview. The SOA will be asked to provide written confirmation (email is acceptable) that the record accurately reflects their evidence.

Interviewing children and young people

If Police or DCJ have already interviewed a child, the investigator will assess whether it is necessary to re-interview them, taking into consideration the issues covered by the Police/DCJ interview, the quality of the evidence elicited from the child, and the child’s circumstances and needs, including the potential for a further interview to cause unnecessary trauma or potentially a less reliable account given the passage of time and/or vulnerability of the child or young person. The views of parents/carers will be sought where necessary. The investigator will document the reason for their decision regarding the child interview.

Parental permission is required to interview the child. The Principal or their delegate may act as a supportive adult when a child or young person is being interviewed, if the child and their parent/carer agrees to this, and if the investigator is satisfied that doing so will not create a conflict of interest.

Assessing evidence

The investigator will assess all of the evidence once it has been gathered. The strength or weight of each piece of evidence will be assessed, having regard to the source and reliability of the evidence; whether it is relevant to the alleged incident; whether accounts are consistent (over time, with other evidence, and more or less plausible); and whether there is any other evidence to support or contradict an allegation.

Making evidence-based findings

Once the evidence has been assessed, the investigator will recommend to the head of entity (the CEO), a finding for each separate allegation, having regard to the relevant thresholds outlined in the [OCG’s related factsheet](#) about making a finding, and the mandatory considerations outlined in Division 6 of the Children’s Guardian Act 2019. (Such a recommendation will only be made after the SOA has been given a further opportunity to comment on any proposed adverse findings – see below.)

Findings will be based on cogent evidence and supported by clear reasons. A substantiated finding must be based on material that logically tends to show that all the facts necessary to establish the allegation are made out to the reasonable satisfaction of the decision maker.

Caution will be exercised when substantiating an allegation about a criminal offence (e.g., sexual offence or assault) in the absence of a criminal conviction. Where a criminal offence cannot be substantiated, consideration will be given to whether there is adequate evidence to substantiate conduct of another type e.g., inappropriate sexual contact or unreasonable use of force.

Section 35 of the *Children’s Guardian Act 2019* requires that when making a finding, consideration must also be given to whether reportable allegations relate to conduct that is in breach of established standards that apply to the SOA e.g., Codes of Conduct, (professional standards and accepted community standards). There may be insufficient evidence to make a finding of reportable conduct, but sufficient evidence to find that an employee/carer breached the Code of Conduct or another policy.

Making additional recommendations

In addition to recommending conduct findings, the investigator will also consider making additional relevant recommendations. In doing so they will consider:

- Whether there are any ongoing risks to the AV or any other person and what strategies can be implemented to remove or minimise these risks
- Whether the investigation has identified deficiencies requiring changes to Shoalhaven River College’s systems, policies, procedures or practices.
- If an adverse finding has been made against the SOA, whether their ongoing employment presents an unacceptable risk and/or what disciplinary action (e.g., probation, performance management, dismissal) may be appropriate.
- Any additional actions that can be taken to address the impact of the allegation on the AV or another affected person (e.g., family). For example, counselling, practical support, referrals to other services, an apology, other actions that may be considered appropriate on a case-by-case basis.
- Having regard to relevant legislative obligations and safety risks, which people and/or external agencies should be provided with information about the outcome of the investigation and what information should be provided.

If an allegation is sustained and it involves the removal of a person’s WWCC, then they cannot continue to perform their role within the agency. If an allegation is sustained, but their clearance has not been removed, then consideration must be given to whether any action should be taken as a result of the investigation, including possible disciplinary action and strategies to minimise future risk of similar conduct occurring.

Risk management action does not require an adverse finding against an SOA to have been made. Disciplinary action towards an individual is usually not appropriate unless sustained misconduct findings have been made. Termination of employment or formal warnings need to be supported by a robust investigation and sufficient evidence, and separate legal advice should generally be sought. Any

disciplinary action is a confidential matter between the affected employee and Shoalhaven River College.

Remedial and disciplinary actions

Examples of remedial and disciplinary action include:

- providing training
- increased supervision
- ongoing monitoring
- implementing a new policy
- mentoring and support from senior management
- requiring a written or verbal apology or an undertaking
- participation in counselling or mediation
- changing work arrangements
- transferring to another work area
- issuing a written warning (first or final warning depending on the circumstances)
- demotion
- dismissal

Providing the SOA with details of the allegation and an opportunity to respond

At the appropriate stage of the investigation, before interviewing the SOA, the investigator will prepare a detailed letter of allegation/s to the SOA (signed by the CEO) that includes enough information to allow the SOA to respond to the allegation/s. The letter will invite the SOA to participate in an interview (with a support person if they prefer) and/or to make a written submission.

The investigation process following the interview and/or receipt of a written submission will be explained to the SOA and they will be reminded of support options.

The Principal/CEO may arrange for a suitable staff member to meet with the SOA and personally provide the letter. If the SOA does not wish to meet, the letter will be sent via post and/or email. A copy of the letter together with the date and method it was provided must be kept on the investigation file. There may be some instances where the letter is provided directly by the investigator.

Notifying the SOA of proposed adverse findings

If adverse findings are proposed, the SOA should be advised of the proposed finding and any actions that may result from the finding. The Principal/CEO may arrange to personally provide the letter to the SOA. If the SOA does not wish to meet, the letter will be provided by post and/or email. A copy of the letter and the date and method of providing it must be made on the investigation file.

The SOA should be given at least 14 days to respond. If the SOA does not acknowledge the letter, the SOA must be contacted, and their response recorded and confirmed in a follow-up email to the SOA.

Any submissions by the SOA must be fully considered by the investigator and reflected in their investigation report.

Providing the OCG with an interim 30-day report (if necessary)

The OCG does not expect the investigation to be conducted within the 30-day timeframe if doing so would compromise the quality of the investigation. It is essential that all relevant information is assessed as part of the investigation process, including interviews with relevant witnesses and the SOA and reviewing information requested from other agencies. It is not uncommon for relevant information to take several weeks or longer to arrive and outside of the 30-day timeframe.

If the investigation is not complete within 30 days, the investigator must provide an [interim report](#) and relevant supporting documents to the OCG and an estimated timeframe (ideally, no longer than six months but this will be affected by any related investigation process underway) for completing the final entity report.

Finalising the investigation report

The investigator will document the investigation and recommended findings as well as any other recommendations in an investigation report. The report will clearly set out the evidence relied upon, how the evidence was assessed and weighed, the investigator’s observations and the reasons for the findings and recommendations made. Sources will be clearly referenced and where relevant, supporting records will be attached.

The investigation report will be provided to the CEO who acts as the final decision maker in relation to the investigation findings and recommendations. The CEO will determine the outcome of the investigation and actions moving forward, including taking any disciplinary action.

The CEO will not depart from the investigator’s findings and/or recommendations unless they have good reasons for doing so. If they decide not to accept the investigator’s findings and/ or recommendations, they will clearly document this, together with the reasons, in the investigation file. If the CEO wishes to make different adverse findings to those proposed by the investigator, the SOA should be given an opportunity to respond to them before the investigation outcomes are finalised.

At the of the investigation, the investigation report and related documentation will be provided by the investigator to the CEO. The Principal/CEO will ensure that all investigation documentation is securely recorded. They will record the investigation outcomes (findings and related actions) on the SOA’s employee file and the relevant child’s file. However, the full investigation details will be stored separately with access restricted to the CEO and Principal (unless the investigation involves them).

Communicating investigation outcomes to involved parties

The CEO is responsible for deciding what information about the investigation outcomes should be communicated to involved parties, having regard to section 57 of the *Children’s Guardian Act 2019* and other relevant information.

- **SOA:** The investigation findings, and reasons for the findings, will be provided to the SOA. The SOA will be advised of any actions that will be taken in response to the findings (including disciplinary actions and the

reporting of sustained findings of sexual misconduct, a sexual offence or a serious physical assault to the OCG’s WWCC Directorate) and their internal and external review options.

- **AV and parents/carers:** The outcome of the investigation will be communicating to the AV and their parents/carers in writing where appropriate (having regard to considerations outlined below about communicating with children and young people, and in the Complaints Guide: Upholding the Rights of children and young people. The AV and their parents/carers may also be provided with specific details of any actions taken to manage direct risks to the AV, however only general information about broader risk management actions will be given.

Detailed information about disciplinary proceedings will not be provided to parties other than the SOA, however other parties may be advised that relevant formal action has or will be taken to address substantiated reportable conduct.

All parties will be advised of their right to complain to the OCG if they are dissatisfied with the investigation.

The investigator will prepare/review correspondence (for the CEO’s signature) to the AV (and their parents/carers), the complainant (if not the AV) and the SOA about the investigation outcomes. The Principal/CEO may arrange to personally provide the letters. Otherwise, correspondence will be sent by post and/or email. Copies of all correspondence about the investigation outcomes, together with the date and method it was provided, will be recorded on the investigation file.

Communicating outcomes to children/young people

Careful consideration will be given when communicating outcomes to children and young people, especially if they have made a disclosure that has resulted in a finding that has not been sustained. The focus should be on the steps that Shoalhaven River College has taken to thoroughly investigate the matter and the reasons for the decision, that is, whether or not the allegations were substantiated, and ensuring the child is supported. In providing outcomes, the privacy rights of the subject of allegation should be considered and care should be taken not to provide more information than is necessary about the actions taken.

Children and young people should also be given the opportunity to provide feedback about how the investigation was carried out and its outcome and to participate in a clear discussion about ‘what is next’ once an investigation process is finished – but this depends on their age, development and other relevant considerations.

Providing the entity report to the OCG and monitoring feedback

Once the CEO has made the final determination, the Principal (or their delegate) will submit the final [Entity Report](#) to the OCG together with all relevant attachments, including the investigation report and final letter of advice to the SOA.

The OCG’s Reportable Conduct Division will internally notify the WWCC Unit of any sustained finding of sexual misconduct, a sexual offence, or a serious physical assault, which are automatic triggers for a WWCC risk assessment.

Notifying investigation outcomes to the Board and relevant agencies

The CEO will advise the Board of Directors of investigation outcomes and OCG feedback. The CEO will also consider, in consultation with the investigator, if the investigation outcomes should be shared with any other agency that is a prescribed body/s under Chapter 16A to assist the agency to assess and manage any child protection risks.

Implementing actions

The CEO will assign recommendations/actions arising from the investigation to a suitable staff member for follow-up. In most cases this will be the Principal. The Principal is responsible for ensuring the recommendations/actions are implemented and that evidence of this is recorded. The CEO will track compliance with the implementation of any recommendations or actions arising from reportable conduct investigations.

Record-keeping

Reportable conduct records must be kept in accordance with the Record keeping and Information Sharing Policy. Records will be maintained in secure electronic files and access will be strictly controlled.

All records relating to a reportable allegation and the investigation will be stored on a separate, secure investigation file. Records include notes of discussions and phone calls, emails/correspondence, notifications/reports to external agencies (e.g. Police/DCJ/OCG) risk assessment, interviews and other evidence, records of decisions (and reasons) and actions, investigation report.

Only the reportable allegation and the outcome of the investigation is to be recorded on the relevant child/young person’s student file and the SOA’s file. The Principal is responsible for ensuring this occurs.

All records about reportable allegations and investigations must be retained for a minimum of 30 years. Records that relate to the alleged sexual abuse of a child or young person must be retained indefinitely.

Confidentiality

Reportable allegations will be dealt with confidentially at all stages of the process.

Employees must not discuss a reportable conduct matter except to meet their responsibilities. They must not inform another staff member, parent, carer, student or any other person that an allegation or conviction of reportable conduct has been made, or try to discuss the allegation with the SOA.

No staff member may comment to the media or other person about any reportable allegation unless expressly authorised by the CEO to do so. Known or suspected breaches of confidentiality must be immediately reported to the

Document : 51.3 Protecting children and young people – Reportable Conduct Scheme V11		
Version #13		Date: Dec 2023

	<p>Principal/CEO who will ensure appropriate risk management in consultation with the investigator and privacy obligations.</p> <p>Tracking and monitoring of reportable conduct The CEO is responsible for centrally tracking and monitoring all reportable allegations to ensure legislative obligations are met.</p> <p>The CEO will notify the Board of Directors of reportable allegations as part of regular reporting to the Board (allegations that involve a Board member will not be notified via the usual reporting procedures). Serious reportable allegations will be notified to the Board by the CEO as soon as possible.</p> <p>The CEO is responsible for reporting OCG feedback, and for ensuring that Shoalhaven River College continues to have appropriate systems and processes in place for preventing, detecting and responding to reportable conduct.</p> <p>The Board is responsible for reviewing data and analysis about reportable conduct provided by the CEO to identify trends and opportunities to improve Shoalhaven River College’s systems and processes for preventing, detecting and responding to reportable conduct.</p>
Related Policies	<p>Shoalhaven River College Code of Conduct Child Safe Policy Child Safe Procedure – Mandatory Reporting Child Safe Procedure – Reporting to Police Duty of Care Policy Student Discipline Policy Critical Incidents and Emergencies Policy Record-keeping and Information Sharing Policy Privacy Policy</p>